

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SANDRA W. BENDIXEN and U.S. POSTAL SERVICE,
MAIN POST OFFICE, Des Moines, Iowa

*Docket No. 96-1206; Submitted on the Record;
Issued May 14, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs abused its discretion in refusing to reopen appellant's case for further merit review.

On September 5, 1990 appellant, then a 37-year-old letter sorting machine clerk, sustained a cervical muscle strain and a trapezius muscle strain in the performance of duty. She lost time from work intermittently. Appellant was involved in a motor vehicle accident on November 2, 1991 when her motor vehicle rolled after skidding on ice. She sustained a small anterior compression fracture of the spine at T6 as a result of this accident. Appellant continued to be treated for complaints of problems with her right shoulder and spine.

By decision dated October 18, 1994, the Office denied appellant's claim for continuing compensation benefits on the grounds that the medical evidence of record established that appellant had no residual disability or medical condition causally related to her September 5, 1990 employment injury.

By letter dated September 28, 1995, appellant requested reconsideration of the denial of her claim.

In support of her request for reconsideration, appellant submitted a one-page functional capacity evaluation dated December 1, 1994 and prepared by a physical therapist.

By decision dated January 10, 1996, the Office denied appellant's request for further merit review of her claim.

The Board finds that the Office did not abuse its discretion in refusing to reopen appellant's case for further merit review.

The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal.¹ As appellant filed her appeal with the Board on March 7, 1996, the only decision properly before the Board is the Office's January 10, 1996 decision denying appellant's request for reconsideration. The Board has no jurisdiction to consider the Office's October 18, 1994 decision, denying appellant's claim for continuing compensation benefits.²

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his claim by showing that the Office erroneously applied or interpreted a point of law, by advancing a point of law or a fact not previously considered by the Office, or by submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.³

In this case, by decision dated October 18, 1994, the Office denied appellant's claim for continuing compensation benefits for her September 5, 1990 employment injury, on the grounds that the medical evidence established that her disability and medical condition causally related to her employment injury had resolved. In support of her request for reconsideration dated September 28, 1995, appellant submitted a functional capacity evaluation from a physical therapist. A physical therapist is not a "physician" as defined by the Federal Employees' Compensation Act.⁴ Accordingly this document is of no probative value on the medical issue of continuing disability and does not constitute relevant and pertinent evidence not previously considered by the Office. Therefore, the Office properly denied appellant's request for reconsideration.

¹ 20 C.F.R. §§ 501.2(c); 501.3(d)(2).

² *Leon D. Faidley, Jr.*, 41 ECAB 104, 108-09 (1989).

³ 20 C.F.R. § 10.138(b)(2).

⁴ Physical therapists are not physicians under the Act and are not qualified to provide the necessary medical evidence to met appellant's burden of proof. *Jane A. White*, 34 ECAB 515, 518-19 (1983). Section 8101(2) provides that the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners.

The January 10, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
May 14, 1998

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member